

New York State Department of Environmental Conservation

Office of General Counsel, Region 4

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2048 • Fax: (518) 357-2087

Website: www.dec.ny.gov



Joe Martens
Commissioner

CERTIFIED - RETURN RECEIPT REQUESTED

7011 1570 0003 0363 2034

August 21, 2012

Daniel L. Doherty, Esq.
90 State Street
Albany, NY 12207

Re: Faddegon's Nursery, Inc.
Order on Consent
R4-2012-0618-50

Dear Mr. Doherty:

Enclosed please find a copy of the fully executed Order on Consent referenced above.

This will also acknowledge receipt of \$3500 of the civil penalty pursuant to Paragraph I.

Sincerely,

Karen S. Lavery
Assistant Regional Attorney
Region 4

Enclosure

c: S. Brandon

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation Law
("ECL") Article 33 and
Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of
New York ("6 NYCRR"),

ORDER ON CONSENT
R4-2012-0618-50

-by-

Faddegon's Nursery, Inc.
1140 Troy Schenectady Road
Latham, NY 12110

Respondent

WHEREAS:

1. The Department of Environmental Conservation ("Department") has jurisdiction in all matters pertaining to the distribution, sale, use and transportation of pesticides, pursuant to ECL Article 33.
2. Respondent Faddegon's Nursery, Inc. owns/operates a garden center and commercial pesticide business located at 1140 Troy Schenectady Road, Latham, NY ("Albany County").
3. Respondent is a person as defined in ECL §33-0101 (33).
4. On May 10, 2012 and May 29, 2012, Department staff conducted routine inspections at Faddegon's Nursery, Inc.

First Violation

5. At the time of the inspections, Department staff observed the following unregistered pesticides being offered for sale: 2 containers of Bayer Lawn and Garden Multi-Insect Killer (EPA Reg. # 3125-502-72155) and 4 containers of Bonide Garden Dust (EPA Reg. #4-30).

6. ECL 33-1301.2(a) provides that:

"It shall be unlawful:

1. *For any person to distribute, sell, offer for sale or use within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:*

a. Any pesticide which has not been registered pursuant to the provisions of this article or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided that in the discretion of the commissioner a change in the labeling or formula of a pesticide maybe made within a registration period without requiring re-registration of the product."

7. Respondent violated ECL 33-1301.2(a) by offering for sale, unregistered general use pesticides.

Second Violation

8. At the time of the inspections, Department staff reviewed Respondent's 2010-2012 pesticide application records and determined that Respondent failed to record daily use records (dosage rate, target organism, method of application and place of application).

9. Regulations at 6 NYCRR 325.25(a) provide that *"all businesses required to register pursuant to section 325.23 of this Part shall keep true and accurate records in a manner specified by the department showing: the kind and quantity of each pesticide used; dosage rates; methods of application; target organisms; and the use, date and place of application for each pesticide used. These records shall be maintained on an annual basis and retained for a minimum of three years and shall be available for inspection upon request by the department."*

10. Respondent's failure to record daily use records is a violation of regulations at 6 NYCRR 325.25(a).

Third Violation

11. At the time of the inspections, Department staff reviewed Respondent's commercial lawn care contracts and determined that they did not state the total number of commercial lawn applications to be provided.

12. Regulations at 6 NYCRR 325.40(a)(2) provide that *"prior to a commercial lawn application, except a commercial lawn application on property owned, leased or rented by the employer of the pesticide applicator, the pesticide applicator or business providing these services must enter into a written contract with the owner of the property to which the commercial lawn application is to be made or the owner's agent. A written contract must: (2) state the total number of commercial lawn applications to be provided"*

13. Respondent violated regulations at 6 NYCRR 325.40(a)(2) by failing to state the total number of commercial lawn applications to be provided in its commercial lawn care contracts.

Fourth Violation

14. At the time of the inspections, Department staff reviewed Respondent's commercial lawn care contracts and determined that they did not list the pesticides to be applied including EPA Registration Numbers.

15. Regulations at 6 NYCRR 325.40(a)(4)(i) provide that *"prior to a commercial lawn application, except a commercial lawn application on property owned, leased or rented by the employer of the pesticide applicator, the pesticide applicator or business providing these services must enter into a written contract with the owner of the property to which the commercial lawn application is to be made or the owner's agent. A written contract must: include a written copy, in at least 12-point type of:*
(i) a list of pesticides to be applied including brand names and generic names of active ingredients"

16. Respondent violated regulations at 6 NYCRR 325.40(a)(4)(i) by failing to list the pesticides to be applied including EPA Registration Numbers, in its commercial lawn care contracts.

Fifth Violation

17. At the time of the inspections, Department staff reviewed Respondent's commercial lawn care contracts and determined that its business registration number and certification number were not listed on its commercial lawn care contracts.

18. Regulations at 6 NYCRR 325.40(a)(4)(iii) provide that *"prior to a commercial lawn application, except a commercial lawn application on property owned, leased or rented by the employer of the pesticide applicator, the pesticide applicator or business providing these services must enter into a written contract with the owner of the property to which the commercial lawn application is to be made or the owner's agent. A written contract must: include a written copy, in at least 12-point type of:*
(iii) the name, address, telephone number and pesticide business registration number of the pesticide business providing the commercial lawn application service and the pesticide applicator certification identification card number of the person employed by the pesticide business who will provide or supervise the commercial lawn application service."

19. Respondent violated regulations at 6 NYCRR 325.40(a)(4)(iii) by failing to include the business registration number and certification number in its commercial lawn care contracts.

Sixth Violation

20. At the time of the inspections, Department staff reviewed Respondent's commercial lawn care contracts and determined that they failed to include the names and addresses of the property owners.

21. Regulations at 6 NYCRR 325.40 (a)(5) provide that *"prior to a commercial lawn application, except a commercial lawn application on property owned, leased or rented by the employer of the pesticide applicator, the pesticide applicator or business providing these services must enter into a written contract with the owner of the property to which the commercial lawn application is to be made or the owner's agent. A written contract must include a written copy, in at least 12-point type of:*
(5) state the name of the property owner or owner's agent and the address of the premises to be treated."

22. Respondent violated regulations at 6 NYCRR 325.40 (a)(5) by failing to include the names and addresses of the property owners, in its commercial lawn care contracts.

Seventh Violation

23. At the time of the inspections, Department staff reviewed Respondent's commercial lawn care contracts and determined that they were not signed by the pesticide applicator/business.

24. Regulations at 6 NYCRR 325.40(a)(6) provide that *"prior to a commercial lawn application, except a commercial lawn application on property owned, leased or rented by the employer of the pesticide applicator, the pesticide applicator or business providing these services must enter into a written contract with the owner of the property to which the commercial lawn application is to be made or the owner's agent. A written contract must include a written copy, in at least 12-point type of:*
(6) be signed by both the pesticide applicator or business providing the commercial lawn application and the owner or owner's agent of the property to which the commercial lawn application is to be made; provided, however, the signature of the owner or owner's agent is not required if the pesticide applicator or business possesses a separate document that specifically evidences the owner or owner's agent signature as acceptance of the written contract, such as a copy of a prepayment check, in the exact amount specified in the written contract for the agreed-upon services."

25. Respondent violated regulations at 6 NYCRR 325.40(a)(6) by failing to sign their commercial lawn care contracts.

Civil Penalty

26. ECL § 71-2901 (1) provides, *inter alia*, that "any person who violates any provisions of Article 33 of that chapter, or any rule, regulation or order issued thereunder, shall be liable for a civil penalty not to exceed \$5,000 for a first violation, and an additional penalty of up to \$10,000 for each subsequent violation."

Waiver of Hearing

27. Respondent has affirmatively waived its right to notice and hearing in the manner provided by law and has consented to the issuing and entering of this Order and agrees to be bound by its terms, provisions and conditions contained within the Order.

NOW, having considered this matter and being duly advised, it is ORDERED that:

I. With respect to the aforesaid alleged violations, a civil penalty in the amount of SEVEN THOUSAND DOLLARS (\$7,000) of which THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500) shall be payable to the New York State Department of Environmental Conservation by money order, or certified check at the time this Order is signed, notarized and returned to the Department.

The balance THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500) shall be suspended so long as Respondent shall comply with the Schedule of Compliance.

Payment of the above penalties shall not in any way alter Respondent's obligation to complete performance under the terms of this Order.

In the event that Respondent fails to comply with the requirements of this Order the entire suspended portion of the penalty shall become due and payable upon written notice to Respondent without prejudicing the Department from seeking further appropriate penalties for violations of this Order by Respondent.

II. The provisions of this Order shall be deemed to bind Respondent, its agents, employees, and all persons, firms, corporations acting under or for them.

III. Respondent shall indemnify and hold harmless the Department, the State of New York, and its representatives and employees for all claims, suits, actions, damages and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of the provisions hereof by Respondent, its directors, officers, employees, servants, agents, successors or assigns.

IV. No change in this Order shall be made or become effective except as set forth by a written order of the Commissioner or the Commissioner's designee.

V. This Order is deemed effective on the date signed by the Department.

VI. Except as specifically provided in this Order, nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting:

A. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against Respondents for any other violations of the ECL, rules or regulations promulgated thereunder or permits issued thereunder;

B. Any legal or equitable rights or claims, actions, proceedings, suits, causes of action or demands whatsoever that the State may have against anyone other than Respondent, its agents, its servants, its employees, its successors and its assigns;

C. Whatever right the Department has to bring any action or proceeding against Respondent and/or any of Respondent's employees, servants, agents, successors, and assigns with respect to claims for natural resource damages; and

D. Respondent's right to assert all available defenses to any claims, actions, proceedings, suits, causes of actions or demands made or commenced by the State or the Department or any other third party, provided, however, that Respondent waive all legal or equitable rights claims, actions, proceedings, appeals, suits, causes of action, defenses or demands whatsoever that it may have to a judicial review of the validity and binding effect of this Order and whether or not this Order has been entered into voluntarily by Respondent.

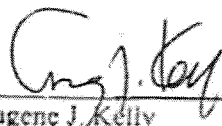
VII. The provisions of this Order constitute the complete and entire Order issued to the Respondent concerning resolution of the violations identified herein. No term, condition, understanding or agreement purporting to modify or vary any term hereof shall be binding unless made in writing and subscribed by the party to be bound, pursuant to Paragraph IV of this Order. No informal oral or written advice, guidance, suggestion or comment by the Department regarding any report, proposal, plan, specification, schedule, comment or statement made or submitted by Respondent shall be construed as relieving Respondent of its obligations to obtain such formal approvals as may be required by this Order.

VIII. Compliance with the terms and conditions of this Order shall be in full civil settlement of the violations cited in this Order.

DATED: 8/20, 2012
Rotterdam, New York

Joseph J. Martens
Commissioner
New York State Department of
Environmental Conservation

BY:


Eugene J. Kelly
Regional Director
Region 4

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to notice and hearing herein and agrees to be bound by the provisions, terms and conditions contained herein.

Faddegon's Nursery, Inc.

SIGNED: Robert Greaves

TITLE: VP

DATE: 08/01/12

STATE OF New York

) ss.:

COUNTY OF Albany)

On the 1st day of August in the year 2012 before me, the undersigned, a Notary Public in and for the State, personally appeared Robert Greaves personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[Signature]
Notary Public

Qualified in the County of: Rensselaer

My Commission Expires: 6/16/14

ANTONIETTA NARDOIA
Notary Public, State of New York
Reg. #01NA6188877
Qualified in Rensselaer County
Commission Expires June 16, 2014

SCHEDULE OF COMPLIANCE

1. As of the effective date of this Order, Respondent shall cease and desist the sale of Bayer Lawn & Garden Multi-Insect Killer (EPA Reg. # 3125-502-72155) and Bonide Garden Dust (EPA Reg. # 4-30) in New York State.
2. Within 30 days of the effective date of this Order, Respondent shall either submit to the Department, (1) a plan for the legal disposal of the unregistered products OR (2) notify the Department of its intent to return the unregistered products to their corresponding distributors. These products are currently under quarantine at 1140 Troy Schenectady Road, Latham, NY 12210. To dispose of the products or ship them out of state, the quarantine must be released by the Department.
3. Within 30 days of the effective date of this Order, Respondent shall submit to the Department, a copy of the Business's revised and corrected commercial lawn care contract.
4. Within 30 days of the effective date of this Order, Respondent shall submit a signed and notarized Compliance Verification Affidavit ("CVA") (enclosed) certifying that the actions necessary to come into compliance with the Department's regulatory program, and those actions specified in this document, have been completed.

This document shall be addressed to:

Ms. Selinda Brandon
NYS Department of Environmental Conservation
Bureau of Pesticides Management
1130 North Westcott Rd
Schenectady, NY 12306

COMPLIANCE VERIFICATION AFFIDAVIT

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation Law
("ECL") Article 33 and
Title 6 of the Official
Compilation of Codes, Rules and
Regulations of the State of
New York ("6 NYCRR"),

-by-

Faddegon's Nursery, Inc.
1140 Troy Schenectady Road
Latham, NY 12110

Respondent

I, Robert Graves, being duly sworn, do depose and say that I am the Vice President of Faddegon's Nursery, Inc. and that Faddegon's Nursery, Inc. has complied with the requirements of paragraph Nos. 1-3 of the Order on Consent's Schedule of Compliance (R4-2012-0618-50) effective on the date signed by the Regional Director.


Signature of Respondent

Subscribed and sworn to before me

On this 1st day of August, 20 12



Notary Public

ANTONIETTA NARDOIA
Notary Public, State of New York
Reg. #01NA6186877
Qualified in Rensselaer County
Commission Expires June 16, 20 16

COMPLIANCE VERIFICATION AFFIDAVIT

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of Violations
of the Environmental Conservation Law
("ECL") Article 33 and
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Faddegon's Nursery, Inc.
1140 Troy Schenectady Road
Latham, NY 12110


Respondent

I, Robert Graves, being duly sworn, do depose and say that I am the Vice President of Faddegon's Nursery, Inc. and that Faddegon's Nursery, Inc. has complied with the requirements of paragraph Nos. 1-3 of the Order on Consent's Schedule of Compliance (R4-2012-0618-50) effective on the date signed by the Regional Director.


Signature of Respondent

Subscribed and sworn to before me

On this 12th day of August, 20 12


Notary Public

ANTONIETTA NARDOIA
Notary Public, State of New York
Reg. #01NA6188877
Qualified in Rensselaer County 116
Commission Expires June 16, 20 14

FADDEGON'S NURSERY, INC.

**1140 TROY-SCHENECTADY ROAD
LATHAM, NY 12110**

518-785-6763

CHEMICAL APPLICATION NOTIFICATION AND CONTRACT

In accordance with the Environmental Conservation Law (ECL) Section 33-1001, we are supplying you with this written contract and labels of chemicals to be used on your property.

Name of property owner: _____

Address of application: _____

Chemical to be used: _____

EPA registration number: _____

Date of application: _____

Alternate date: _____

Total Number of Applications: _____

Total Cost of Applications: _____

Faddegon's registration number: 013985

Name of applicator: _____

Applicators certification number: _____

Applicators signature: _____

Commercial Lawn Applications

The property owner or owner's agent may request the specific dates of the application(s) to be provided and, if so requested, the pesticide applicator or business must inform of the specific dates and include that date or dates in the contract.

Just prior to application we will post signs, which are to remain in place for 24 hours after the application.

I fully understand and agree to the above.

Customer's Signature

Date

Inspection No.	051012SLS01
Applicator/Firm	Faddegon's Nursery, Inc. Robert Graves, VP 1140 Troy Schenectady Rd. Latham, NY 12110
Inspection Date	05/10/12
Report Date	05/14/12

SPECIALIST'S NARRATIVE

On May 10, 2012, a routine inspection of Faddegon's Nursery Inc. was conducted at 1140 Troy Schenectady Rd., Latham, NY. The inspection was conducted to determine the business's compliance with the Department's laws, rules and regulations. The following inspections were conducted: Marketplace Inspection (MPI), Certified Applicator Records (CAR), Agricultural Use Observation (AUO) and a Worker Protection Standard Inspection (WPS).

I presented my NYS credentials and a Notice of Inspection was issued to Mr. Robert Graves, Vice President of Faddegon's Nursery Inc.

AUO/CAR

I began the inspection by asking to see the private application records for the last three years. Private pesticide applications are made to the business's greenhouses and nursery. Upon review of the 2010-2012 application records, the records were found to comply with all private record keeping requirements. I then asked to see the pesticide storage area. The storage area was located in a locked cabinet in their old warehouse. All products were found to be registered, properly labeled and the containers in good condition.

I conducted an Agricultural Use Observation (AUO) from the pesticide application records and by interviewing the pesticide applicator who conducted the application. The pesticides were applied in the facilities greenhouses on May 6, 2012 to tropical plants to control spider mites and aphids. The following products were applied: Avid (EPA Reg. # 100-896) and TriStar (EPA Reg. # 8033-94-1001). The application was made using a low volume atomizer. All applicable label directions were followed for the application.

This site has approximately 10,000 sq ft of greenhouses and 3 acres of nursery, with the principle crops being tropicals, annuals and perennials. Mr. Graves is the applicator responsible for the private pesticide applications at the facility. The facility employed 5 permanent workers and 5 seasonal workers at the time of inspection. Mr. Graves indicated that these individuals were trained as workers since they may be working in areas where a restricted entry interval (REI) has expired but is still within 30 days of the end of the REI. He stated that all workers employed at the facility receive the required EPA safety training from a certified applicator at the time they are hired. A WPS worker training video is utilized to train the workers. I asked Mr. Graves if he

had a way of verifying that the workers had received training and he stated that they are required to sign a safety sign off sheet once they have watched the video. I asked to see sign-off sheets from a few of the business's currently employed workers and he produced them for my review. No custom applications are made at the facility. No early-entry activities occur at the facility.

This facility has not had any pesticide exposure incidents. Mr. Graves explained that if there was a pesticide exposure it would be reported to the Human Resources Department and that he would be primarily responsible for providing transportation and pesticide information.

The central posting location was located in the employee break room. The safety poster was displayed and the emergency medical information was displayed on it. Application information was posted at the central posting location at the time of inspection. The posting location is available to all employees during normal business hours. The last application made at the facility was on May 6, 2012. Mr. Graves explained that he only makes applications at night, which allows the REI to expire before the employees arrive at work the next day.

The decontamination site was a bathroom located within the facility. The decontamination site is located within ¼ mile of the greenhouses and nursery. The decontamination site was found to have an adequate supply of water, soap and single use towels. Drinking water is provided separately from the wash water. The workers are provided notification using the posted warning signs. Notification includes the location and description of the treated areas, REI's and specific instructions not to enter during the REI after pesticide application have occurred.

A worker interview was conducted at the time of inspection. The worker confirmed that Mr. Graves had trained her and that she was aware of all of the posting areas and was always provided full access to the application records and product labels.

No violations were noted during the inspection of the business's private applications records and storage area. At the time of inspection Faddegon's Nursery Inc. complied with all requirements of the Worker Protection Standard.

MPI

I continued by conducting a Marketplace Inspection of the products offered for sale by Faddegon's Nursery, Inc. After inspecting the pesticides offered for sale at the facility, two unregistered pesticides were found being offered for sale. The following unregistered pesticides were found: *Bayer Lawn & Garden Multi-Insect Killer* (EPA Reg. # 3125-502-72155) and *Bonide Garden Dust* (EPA Reg. # 4-30). The unregistered pesticides were quarantined at the time of inspection and placed in the facilities pesticide cabinet in their old warehouse. I explained to Mr. Graves that the sale of an unregistered pesticide is a violation of ECL Art. 33-1301.1(a). All other products inspected were found to be properly labeled and the containers in good condition.

The following Liquid Fence Company, Inc. products were noted as being offered for sale at the time of inspection, *Liquid Fence Deer and Rabbit Repellent* and *Liquid Fence Rabbit Repellent*, but were not quarantined due to ongoing discussions between Liquid Fence Company, Inc., EPA and the Department regarding an earlier quarantine of the product at another facility.

An inspection of the commercial pesticide business was not conducted at the time of this inspection due to the unavailability of the business's commercial applicators. A follow-up inspection was scheduled with Mr. John Howell, Assistant Manager of Faddeggon's Landscaping Division, for May 29, 2012 at 8:30AM.

Enforcement action against Faddeggon's Nursery Inc. is pending upon the completion of the follow-up inspection on May 29, 2012.

Inspection No.	052912SLS01
Applicator/Firm	Faddeggon's Nursery, Inc. John Howell, Asst. Mgr. 1140 Troy Schenectady Rd. Latham, NY 12110
Inspection Date	05/29/12
Report Date	06/07/12

On May 29, 2012, I conducted a Commercial Applicator/Business/Use inspection of Faddeggon's Nursery Inc.'s commercial landscaping business. This inspection was a follow-up to inspection # 051012SLS01. An inspection of the commercial pesticide business was not conducted at the time of the initial inspection due to the fact that the business's commercial applicators were unavailable. Faddeggon's Nursery Inc. was inspected to determine their compliance with all applicable laws, rules and regulations.

I presented my NYS credentials and a Notice of Inspection was issued to Mr. John Howell, Assistant Manager Landscaping Division.

BR/CAR/NAUO

I began the inspection by asking to see the business's pesticide storage area. The storage area was located in a locked cabinet. Upon inspection, all products in the storage area were found to be currently registered, properly labeled and the containers in good condition.

I continued the inspection by asking to see the business's application records for the last three years. After reviewing the 2010-2012 application records, the daily use records (dosage rate, target organism, method of application and place of application) were found to be missing from each year. I reviewed the daily use record keeping requirements to Mr. Howell and explained to

him that the failure to record daily use records for every application was a violation of 6 NYCRR Part 325.25(a).

I then asked to see the business's commercial lawn care contracts. After reviewing the business's contracts, the contracts were found to be missing information. The lawn care contracts were missing the name and address of the property owner, total number of commercial lawn applications, signature of the pesticide applicator/business, EPA registration number of the pesticides to be applied, pertinent pesticide label warnings in 12 point font, business registration number and applicator certification number. I reviewed the lawn care contract requirements with Mr. Howell and explained to him that the failure to record the cited information was a violation of 6 NYCRR Part 325.40(a)(2), 325.40(a)(4)(i), 325.40(a)(4)(iii), 325.40(a)(5) and 325.40(a)(6).

MPI

During this inspection, I observed that the pesticide products, *Liquid Fence Deer and Rabbit Repellent* and *Liquid Fence Rabbit Repellent*, were still being offered for sale. After speaking with my supervisor, Mark Solan PCSII, following the initial inspection, a determination was made that Liquid Fence Company, Inc. products containing the statement "For use on edible crops!", are considered misbranded and unregistered in New York State and should be quarantined.

The following unregistered Liquid Fence Company, Inc. products were quarantined at the time of inspection:

1. Liquid Fence Deer and Rabbit Repellent- no EPA Reg. # (12) 40 fl. oz. Conc.
2. Liquid Fence Deer and Rabbit Repellent- no EPA Reg. # (12) 32 fl. oz. RTU
3. Liquid Fence Deer and Rabbit Repellent- no EPA Reg. # (1) 1 gal RTU
4. Liquid Fence Rabbit Repellent- no EPA Reg. # (6) 32 fl. oz. RTU

The quarantined products were added to the Quarantine Order issued during inspection # 051012SLS01 and placed in the same storage area.

These products all contained the label statement "for use on edible crops" and no EPA registration number was found on any of the labels. The Liquid Fence Company, Inc. makes a claim on their product labels that the products qualify for exemption from registration under FIFRA. EPA requires the establishment of tolerances or exemptions from the requirement of a tolerance for all pesticides (registered or 25b exempt) intended for use in a manner that may result in residues on food or feed. 40 CFR has not established tolerances and/or exemptions which support the use of the product's active ingredients Putrescent Egg Solids and Sodium Lauryl Sulfate on food commodities. The use of the label statement "for use on edible crops" on Liquid Fence products that contain Putrescent Egg Solids and Sodium Lauryl Sulfate would be misleading and does not conform with FIFRA. This label would be considered "misbranded" under the definition in ECL 33-0101.32(a) and 33-0101.32(e). The offering for sale of a misbranded product is a violation of ECL Art. 33-1301.1(e).

These products do not meet the criteria for 25b exemption and therefore require pesticide registration. The offering for sale of an unregistered pesticide is a violation of ECL Art. 33-1301.1(a).

At the time of inspection I requested shipping records for the most recent purchase of any of the quarantined products. Mr. Graves provided copies of a sales invoice for the purchase of (4) gallons of Liquid Fence Deer and Rabbit Repellent 1 gallon RTU from H.B. Davis Seed Co., Inc., 50 Railroad Ave., Albany, NY 12205, on May 21, 2012. Mr. Graves did not immediately have shipping records available for the unregistered Bonide and Bayer products. An inspection of H.B. Davis will be conducted to determine the Companies compliance with the Department's laws, rules and regulations.

CONCLUSION

A Notice of Violation was issued to Faddegon's Nursery, Inc. on June 4, 2012 listing the violations noted during the inspections on May 10, 2012 and May 29, 2012 and requesting shipping records for the unregistered pesticides, *Bayer Lawn & Garden Multi-Insect Killer* (EPA Reg. # 3125-502-72155) and *Bonide Garden Dust* (EPA Reg. # 4-30), found during the initial inspection on May 10, 2012.

The Department received the shipping records requested in the Notice of Violation, on June 13, 2012. Shipping records for *Bonide Garden Dust* (EPA Reg. # 4-30) indicated that the product was legally shipped from H.B. Davis Seed Co., Inc, 50 Railroad Ave., Albany, NY 12205 on June 7, 2010. The products registration expired in New York State on March 31, 2011. Shipping records for the unregistered product, *Bayer Lawn & Garden Multi-Insect Killer* (EPA Reg. # 3125-502-72155), were unavailable. This product was obtained when Faddegon's purchased Cottage Agway and its inventory on or about 2004. The products registration expired on December 31, 2007. Faddegon's Nursery Inc. offered for sale, *Bayer Lawn & Garden Multi-Insect Killer* (EPA Reg. # 3125-502-72155) and *Bonide Garden Dust* (EPA Reg. # 4-30), after the products pesticide registrations had expired.

Enforcement action will be initiated against Faddegon's Nursery Inc. due to violations of ECL 33-1205.1, 33-1301.1(a) and 6 NYCRR Part 325.40(a)(2), 325.40(a)(4)(i), 325.40(a)(4)(iii), 325.40(a)(5) and 325.40(a)(6).



Selinda Brandon
Pesticide Control Specialist I
NYS DEC Region 4

**New York State Department of Environmental Conservation
Regional Division of Solid and Hazardous Materials, Region 4
Bureau of Pesticides**

1130 North Westcott Road, Schenectady, New York 12306-2014

Phone: (518) 357-2354 • Fax: (518) 357-2398

Website: www.dec.ny.gov



Joseph Martens
Commissioner

June 4, 2012

Faddegon's Nursery, Inc.
Mr. Robert Graves
1140 Troy Schenectady Rd.
Latham, NY 12110

NOTICE OF VIOLATION

Dear Mr. Graves:

I am contacting you regarding violations of the Environmental Conservation Law ("ECL") recently documented by the New York State Department of Environmental Conservation ("the Department").

The Department is responsible for the administration and enforcement of laws and regulations pertaining to pesticides in the State of New York, including Articles 15, 33 and 71 of the ECL and Parts 320-329 of Title 6 of the Official Compilation of Codes, Rules and Regulations of New York State ("6NYCRR").

VIOLATIONS DOCUMENTED BY THE DEPARTMENT

33-1301. Unlawful acts.

It shall be unlawful:

1. For any person to distribute, sell, offer for sale or use within this state or deliver for transportation or transport in intrastate commerce or between points within this state through any point outside this state any of the following:
 - a. Any pesticide which has not been registered pursuant to the provisions of this article or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration; provided that in the discretion of the commissioner a change in the labeling or formula of a pesticide may be made within a registration period without requiring reregistration of the product.

The Department has documented that, on or about May 10, 2012, in the town of Latham, Albany County, New York, Faddegon's Nursery, Inc., violated the statute(s) and/or rules and regulations(s) indicated above, in that Faddegon's Nursery, Inc. offered for sale two (2) unregistered general use pesticide products, *Bayer Lawn & Garden Multi-Insect Killer* (EPA Reg. # 3125-502-72155) and *Bonide Garden Dust* (EPA Reg. # 4-30), at their store located at 1140 Troy Schenectady Rd., Latham, NY 12110.

§325.25 Records and reports.

- (a) All businesses required to register pursuant to section 325.23 of this Part shall keep true and accurate records in a manner specified by the department showing: the kind and quantity of each pesticide used; dosage rates; methods of

application; target organisms; and the use, date and place of application for each pesticide used. These records shall be maintained on an annual basis and retained for a minimum of three years and shall be available for inspection upon request by the department.

The Department has documented that, on or about May 10, 2012, in the town of Latham, Albany County, New York, Faddegon's Nursery, Inc., violated the statute(s) and/or rules and regulations(s) indicated above, in that Faddegon's Nursery, Inc. failed to maintain daily use records (dosage rate, target organism, method of application, place of application) for the commercial pesticide applications made by the business from 2010-2012.

§325.40 Commercial Lawn Applications

This section shall be effective on January 1, 2004. The requirements of this section pertain to any commercial lawn application of a pesticide except for the application of a pesticide to a right-of-way (unless required pursuant to paragraph 325.1 (s)(4).

(a) Written Contracts. Prior to a commercial lawn application, except a commercial lawn application on property owned, leased or rented by the employer of the pesticide applicator, the pesticide applicator or business providing these services must enter into a written contract with the owner of the property to which the commercial lawn application is to be made or the owner's agent. A written contract must:

(1) specify the approximate date or dates of application or applications; if requested by the property owner or owner's agent, the specific date or dates of the application(s) must be provided by the pesticide applicator or business and that date must be stated in the contract. The following statement must be prominently displayed in the contract: "The property owner or owner's agent may request the specific date or dates of the application(s) to be provided and, if so requested, the pesticide applicator or business must inform of the specific dates and include that date or dates in the contract.

(2) state the total number of commercial lawn applications to be provided; and

(3) state the total cost of the commercial lawn application service to be provided; and

(4) include a written copy, in at least 12-point type of:

(i) a list of pesticides to be applied including brand names and generic names of active ingredients; and

(ii) any warnings that appear on the label(s) of pesticide(s) to be applied that are pertinent to the protection of humans, animals or the environment; and,

(iii) the name, address, telephone number and pesticide business registration number of the pesticide business providing the commercial lawn application service and the pesticide applicator certification identification card number of the person employed by the pesticide business who will provide or supervise the commercial lawn application service; and

(5) state the name of the property owner or owner's agent and the address of the premises to be treated; and

(6) be signed by both the pesticide applicator or business providing the commercial lawn application and the owner or owner's agent of the property to which the commercial lawn application is to be made; provided, however, the signature of the owner or owner's agent is not required if the pesticide applicator or business possesses a separate document that specifically evidences the owner or owner's agent signature as acceptance of the written contract, such as a copy of a prepayment check, in the exact amount specified in the written contract for the agreed-upon services;

The Department has documented that, on or about May 10, 2012, in the town of Latham, Albany County, New York, Faddegon's Nursery, Inc., violated the statute(s) and/or rules and regulations(s) indicated above, in that Faddegon's Nursery, Inc.'s commercial lawn care contracts did not contain the following information: (a) name and address of the property owner, (b) total number of pesticide applications, (c) signature of the pesticide business/applicator, (d) EPA registration number of the pesticides to be applied, (e) pertinent label warnings in 12 point font, (f) business registration number and (g) applicator certification number.

Pursuant to ECL 33-1501 of the ECL, you are hereby ordered to cease and desist from further violation of any provisions of ECL Article 33, and any rules and regulations promulgated pursuant thereto.

PLEASE BE ADVISED: The Department is requesting that you send shipping documentation for the two unregistered products (listed above) that were shipped to your store located at 1140 Troy Schenectady Rd., Latham, NY 12110.

Within 14 days, upon receipt of this Notice of Violation, a response should be placed in writing and sent to Selinda Brandon, at the above address.

ECL §71-2907 provides administrative, civil and criminal sanctions for addressing violations of the ECL and the rules and regulations promulgated pursuant thereto.

ECL §71-2907(1) provides that any person who violates any provision of ECL Article 33 or any rule, regulations or order issued thereunder, or commits any offence described in ECL §33-1301 shall be liable for a civil penalty not to exceed \$5,000 for a first violation, and not to exceed \$10,000 for a subsequent offense.

PLEASE TAKE NOTICE: This Department may take enforcement action at a future date. Failure to respond and comply with this notice may result in enforcement action taken against Faddegon's Nursery, Inc. Any questions, comments or reply to this Notice of Violation should be placed in writing, and sent to my attention at the above address.

Thank you for your cooperation in resolving these violations. If you have any questions please call me at (518) 357-2354.

Sincerely,

A handwritten signature in cursive script that reads "Selinda Brandon".

Selinda Brandon
Pesticide Control Specialist I
NYS DEC Region 4

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☒ NOTICE OF INSPECTION

☒ USE/MISUSE INSPECTION

INSPECTION #	052912SL501	DATE	05/29/12	TIME	8:30	AM PM	REGION	4
NAME OF INDIVIDUAL	John Howell			TITLE	Head Foreman			
NAME OF FIRM (Note if corporation, partnership, dba, etc)	Faddogon's Nursery, Inc.							
ADDRESS This is the address of the:	1140 Troy Schenectady Rd.							
<input checked="" type="checkbox"/> INSPECTION SITE <input type="checkbox"/> FIRM <input type="checkbox"/> INDIVIDUAL				STATE	NY	ZIP	12110	
CITY / VILLAGE	Latham			TOWNSHIP	Latham		COUNTY	Albany
					PHONE	785-6726		

REASON FOR INSPECTION

- ☒ For the purpose of inspecting and obtaining samples of any pesticides or devices packaged, labeled and released for shipment, samples of any containers or labeling for such pesticides or devices in places where pesticides or devices are produced, or held for distribution or sale.
- ☒ For the purpose of inspecting and obtaining samples of mandated records.
- ☒ For the purpose of inspecting the use of pesticides and sampling pesticides in use to determine if they are being used in compliance with appropriate laws and rules and regulations.
- ☐ For the purpose of inspecting sites where pesticides are being used to collect data on the use of pesticides and to determine whether pesticides are being used in compliance with appropriate laws and rules and regulations.
- ☒ Other

VIOLATION SUSPECTED

CONSENT USE/MISUSE

Voluntary Consent Necessary to Enter for Inspection and/or Sampling.

- ☒ The undersigned hereby voluntarily consents to an inspection of Faddogon's Nursery Inc of which I am the owner, Agent, or Person-in-Charge, for the purposes of gathering information and/or samples in connection with the administration and enforcement of Article 33 and Section 15-0313 of the Environmental Conservation law relating to pesticides. I understand that I have the right to refuse consent to this entry.

SIGNATURE

TITLE

Agent Mktg. Landscape

DATE

5/29/12

This inspection is being performed under authority granted by Article 33 and Section 15-0313 of Article 15 of the Environmental Conservation law relating to pesticides and the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136 et seq.).

INSPECTOR INFORMATION

NAME	Selinda Brandon	TITLE	PCSI	ID NUMBER	SL5	PHONE NUMBER	357-2354
SIGNATURE	Selinda Brandon	OFFICE LOCATION	Schd'y	ACCOMPANIED BY			



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PESTICIDE APPLICATOR/BUSINESS/USE INSPECTIONS

INSPECTION NUMBER 052912SL501		FIRM/FACILITY/PERSON INTERVIEWED Faddleton's Nursery Inc.		EQUIPMENT TYPE/SIZE Hand Can					
TYPE OF INSPECTION: <input checked="" type="checkbox"/> Business/Agency <input checked="" type="checkbox"/> Applicator <input checked="" type="checkbox"/> Non-agricultural use <input type="checkbox"/> Agricultural use		SITE OF INSPECTION 1140 Troy Schenectady Rd, Latham							
BUSINESS REG. NO./EXPIRATION DATE 03995 6/30/2012		INSURANCE COMPANY/EXPIRATION DATE							
APPLICATOR NAME/CERTIFICATION TYPE		CERTIFICATION ID	CATEGORY/EXPIRATION	SUPERVISED BY					
Robert Lewis Comm Appl		C4833521	3A 10/21/14	_____					
Scott Mulbury Comm Appl		C4847057	3A 4/21/14	_____					
DATE/TIME/WEATHER CONDITIONS DURING APPLICATION 4/24/12		CROP Birch Trees	SITE/SIZE	TARGET PESTS Bronze Birch Borer					
PESTICIDE NAME/EPA REG NO.		METHOD OF APPLICATION	CLASSIFICATION	FORMULATION	LABEL RATE				
Imidacloprid 432-1312-73220		Broadleaf Foliar	RU	DF	4.5-9 ml/1.5 gal 5ml/1.5 gal				
OBSERVED RATE									
LABEL/EQUIPMENT REQUIREMENTS	REFERENCE SECTION	Yes	No	NA	APPLICATOR REQUIREMENTS	REFERENCE SECTION	Yes	No	NA
Label Rate Followed	325.2(b)	<input checked="" type="checkbox"/>			Apprentices Properly Supervised	325.7(d)			<input checked="" type="checkbox"/>
Target Pests on Label	325.2(b)	<input checked="" type="checkbox"/>			Apprentices Trained/Documented	325.10(a)			<input checked="" type="checkbox"/>
PPE/Cautionary Labeling Followed	325.2(b)	<input checked="" type="checkbox"/>			Apprentice Variance Approved	325.10(b)			<input checked="" type="checkbox"/>
Preharvest Interval/REI per Label	325.2(b)	<input checked="" type="checkbox"/>			I. D. Card in Possession During Use	325.7(a)	<input checked="" type="checkbox"/>		
Crop/Area Treated per Label	325.2(b)	<input checked="" type="checkbox"/>			Label in Possession During Use	325.2(d)	<input checked="" type="checkbox"/>		
Pesticide Containers Properly Labeled	33.1301(1)(b)	<input checked="" type="checkbox"/>			Notification Requirements Met	33-0905(5)	<input checked="" type="checkbox"/>		
Service Containers Properly Labeled	33.1301(1)(b)			<input checked="" type="checkbox"/>	REPORTS/RECORDS	33-1205(1)	Yes	No	NA
Containers Properly Rinsed and Disposed	325.4(a)	<input checked="" type="checkbox"/>			EPA Reg. No.		<input checked="" type="checkbox"/>		
Backflow Prevention/Air Gap Present	325.2(c)	<input checked="" type="checkbox"/>			Product Name		<input checked="" type="checkbox"/>		
Proper Stickers on Equipment/Vehicles	325.26	<input checked="" type="checkbox"/>			Quantity		<input checked="" type="checkbox"/>		
Equipment Properly Calibrated		<input checked="" type="checkbox"/>			Date Applied		<input checked="" type="checkbox"/>		
Storage Locked/Containers Secure		<input checked="" type="checkbox"/>			Address		<input checked="" type="checkbox"/>		
Warning Signs Posted		<input checked="" type="checkbox"/>			Place of Application		<input checked="" type="checkbox"/>		
Location of Container Disposal: locked cabinet 3x rinsed/empty					Dosage Rate		<input checked="" type="checkbox"/>		
Location of Pesticide Storage: locked cabinet					Method of Application		<input checked="" type="checkbox"/>		
Water Source: city or onsite					Target Organism/Crop Treated		<input checked="" type="checkbox"/>		
Pesticide Mixing Area: onsite and at office					Records Kept 3 Years		<input checked="" type="checkbox"/>		
REMARKS:									
Imidacloprid 2F EPA Reg # recorded as 102-705, actual EPA Reg# 432-1312-73220!									
Daily use records were not recorded for 2010-2012									
INSPECTOR'S SIGNATURE John Brandon					DATE AND TIME INSPECTED 5/29/12				



ORNAMENTAL AND TURF CHECKLIST

FIRM/ FACILITY:

Faddagons Nursery Inc.

INSPECTION #:

052912SL501

JOB LOCATION:

COMMERCIAL LAWN APPLICATION CHECKLIST

6 NYCRR
Part:

Yes

No

N/A

Un-
known

I	Does a commercial lawn application contract exist between the business and the property owner/ agent in charge of the property? - If YES, Complete A-N	325.40(a)	X			
A	Is a copy of the valid lawn application contract maintained by the pesticide application company?	325.40(a)(e)	X			
B	Does the contract state the name of property owner or his agent and address to be treated?	325.40(a)(5)		X		
C	Does the contract contain the approximate and/or specific date or dates of application?	325.40(a)(1)	X			
D	Does the contract contain the total cost of all the commercial lawn applications?	325.40(a)(3)	X			
E	Does the contract contain the total number of commercial lawn applications for the season?	325.40(a)(2)		X		
F	Is contract signed by the pesticide applicator <u>business</u> and the owner or owner's agent?	325.40(a)(6)	X	X		
G	Was written notice provided if existing contract transferred to different application company?	325.40(b)			X	
H	Does contract list substances to be applied, including brand names and generic names of active ingredients? [In 12 point type? Yes <input type="checkbox"/> No <input type="checkbox"/>	325.40(a)(4)(i)	X			
I	Are pertinent label warnings in contract? [In 12 point type? Yes <input type="checkbox"/> No <input type="checkbox"/>	325.40(a)(4)(ii)	X			
J	Is business name, address and phone number listed on contract? [In 12 point type? Yes <input type="checkbox"/> No <input type="checkbox"/>	325.40(a)(4)(iii)	X			
K	Is business registration number listed on contract? [In 12 point type? Yes <input type="checkbox"/> No <input type="checkbox"/>	325.40(a)(4)(iii)		X		
L	Is applicator certification number listed on contract? [In 12 point type? Yes <input type="checkbox"/> No <input type="checkbox"/>	325.40(a)(4)(iii)		X		
M	If the specific pesticides for a proposed application date are not listed in the contract, was written/oral notification provided to the owner/agent prior to/at the application?	325.40(d)				
N	How are alternate dates of application provided?	325.40(c)	Oral <input type="checkbox"/> Written <input checked="" type="checkbox"/> Not Provided <input type="checkbox"/>			
II	Has application area been visually posted? If Yes, complete A-O	325.40(f)			X	X
A	Are the visual markers AT LEAST 4" By 5" in size?	325.40(f)				
B	Are visual markers yellow in color with black lettering?	325.40(f)				
C	Are all of the letters on the markers AT LEAST 3/8" in height?	325.40(f)				
D	Is "Pesticide Application" or "Pesticide Treatment" or "Pesticides Applied" on marker front?	325.40(f)(1)				
E	Do the front of the markers contain the phrase "Do Not Enter" ?	325.40(f)(3)				
F	Do the front of the markers contain the phrase "Do Not Remove Sign For 24 Hours" ?	325.40(f)(4)				
G	Does marker have 1.5" diameter warning symbol (e.g. person & dog w/slash or stern face w/hand)?	325.40(f)(5)				
H	Does marker contain date & time of application <u>unless</u> provided to owner/agent prior to leaving?	325.40(f)(2)				
I	Does the marker front contain anything other than D - H above and business name & phone #?	325.40(g)				
J	Are the top of the markers AT LEAST 12" above the ground?	325.40(h)(1)				
K	Were markers posted <u>prior</u> to application?	325.40(h)(2)				
L	Are markers placed such that front of the markers are clearly visible from outside the treated area?	325.40(h)(3)				
M	Is marker placement not more than 50' apart (4"x5" sign) or not more than 100' apart (5"x6" sign)?	325.40(h)(4)				
N	Markers also placed at common entry points adjacent to treated areas, such as drive & walkways?	325.40(h)(5)				
O	Are AT LEAST 2 markers posted on treated premises that have all or portions of the perimeter impassable due to nature/manmade objects, except for treated trees/shrubs approachable one-way?	325.40(h)(6)				

NOTES:

EPA Reg #s not listed on contract

Copy of a 2012 contract could not be found

INSPECTOR'S SIGNATURE:

DATE:

5/29/12



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INSPECTION REPORT COVER SHEET

Inspection #: 052912SL501	Name of Person Contacted: John Howell
Name of Business: Faddogon's Nursery, Inc.	Official Position: Asst. Mgr. Landscape Div.
Street Address: 1140 W. Schenectady Rd.	Post Office Address: N/A
City/State/Zip Code: Latham, NY 12110	City/Village/Township: N/A
Telephone Number: 795-6726	County: Albany

Inspector's Initials	Name of Inspection Form	Form Number
SLB	Notice of Inspection	NOI
SLB	Pesticide Applicator/Business/Use Inspections	USE
	Worker Protection Standard Inspection	WPS
	Liquid Termiticide Use Checklist	TER
SLB	Ornamental and Turf Checklist	T&O
	Voluntary Statement	VOL
	Receipt for Samples	SAM
	Market Place/Restricted Dealers Records Inspection	MKT
	Market Place/Restricted Dealer Records Inspection Continuation Sheet	MPC
	Quarantine Order	QRN
	Quarantine Order Release	QOR
	Experimental Use Permit Checklist	EUP
	Authorization for Medical Record Disclosure	MED

Inspector's Signature: Mark Brandt Number: 25 Date: 5/29/12

Inspection Acknowledgment: I acknowledge receiving a copy of the above listed inspection documents initiated by the inspector.

Signature: [Signature] Date: 5/29/12

Print Name: JOHN C. HOWELL

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☒ NOTICE OF INSPECTION

☒ USE/MISUSE INSPECTION

INSPECTION #	051012SL501	DATE	5/10/12	TIME	12:30	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	REGION	4
NAME OF INDIVIDUAL	Robert Graves			TITLE	VP			
NAME OF FIRM (Note if corporation, partnership, dba, etc)	Fadden's Nursery, Inc.							
ADDRESS This is the address of the:	1140 Troy Schenectady Rd							
<input checked="" type="checkbox"/> INSPECTION SITE <input checked="" type="checkbox"/> FIRM <input type="checkbox"/> INDIVIDUAL								
CITY / VILLAGE	Latham			STATE	NY		ZIP	12110
TOWNSHIP	Latham			COUNTY	Albany		PHONE	785-6726

REASON FOR INSPECTION

- ☒ For the purpose of inspecting and obtaining samples of any pesticides or devices packaged, labeled and released for shipment, samples of any containers or labeling for such pesticides or devices in places where pesticides or devices are produced, or held for distribution or sale.
- ☒ For the purpose of inspecting and obtaining samples of mandated records.
- ☒ For the purpose of inspecting the use of pesticides and sampling pesticides in use to determine if they are being used in compliance with appropriate laws and rules and regulations.
- ☒ For the purpose of inspecting sites where pesticides are being used to collect data on the use of pesticides and to determine whether pesticides are being used in compliance with appropriate laws and rules and regulations.
- ☒ Other

VIOLATION SUSPECTED

NONE

CONSENT USE/MISUSE

Voluntary Consent Necessary to Enter for Inspection and/or Sampling.

- ☒ The undersigned hereby voluntarily consents to an inspection of Fadden's Nursery, Inc. of which I am the owner, Agent, or Person-in-Charge, for the purposes of gathering information and/or samples in connection with the administration and enforcement of Article 33 and Section 15-0313 of the Environmental Conservation law relating to pesticides. I understand that I have the right to refuse consent to this entry.

SIGNATURE	Robert Graves	TITLE	VP	DATE	5/10/12
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This inspection is being performed under authority granted by Article 33 and Section 15-0313 of Article 15 of the Environmental Conservation law relating to pesticides and the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136 et seq.).

INSPECTOR INFORMATION

NAME	Selinda Brandon	TITLE	PCSI	ID NUMBER	20	PHONE NUMBER	357-2334
SIGNATURE	Selinda Brandon	OFFICE LOCATION	Schduy	ACCOMPANIED BY			



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WORKER PROTECTION STANDARD INSPECTION

Inspection # <u>05703501</u>	Date: <u>05/10/12</u>	Inspection: <input type="checkbox"/> Unannounced <input checked="" type="checkbox"/> Appointment
Firm/Farm Name <u>Faddugon's Nursery Inc.</u>	Inspection Type: Tier I <input checked="" type="checkbox"/> or Tier II <input type="checkbox"/>	
Type of Establishment: (check all applicable): <input type="checkbox"/> Farm <input checked="" type="checkbox"/> Greenhouse <input checked="" type="checkbox"/> Nursery <input type="checkbox"/> Family establishment <input type="checkbox"/> Research <input type="checkbox"/> Forest		
Approx. total area of establishment: <u>10000 sq ft</u>	Principal crops: <u>Tropicals, annuals, perennials</u>	
# of certified applicators with establishment: <u>5</u>	Name of person(s) directing/controlling pesticide use: <u>Robert Graves</u>	
Who applies pesticides? (check all applicable): <input type="checkbox"/> Owner <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Custom Applicator		
Note: For data in this block, estimates provided by the establishment are sufficient.		
# present at this inspection:	workers <u>10</u>	handlers <input checked="" type="checkbox"/>
1. # present during last pesticide application:	workers <u>10</u>	handlers <input checked="" type="checkbox"/>
2. or for the last 30 days: (circle one)	workers <u>10</u>	handlers <input checked="" type="checkbox"/>
# of permanent employees:	workers <u>5</u>	handlers <input checked="" type="checkbox"/>
# of seasonal employees:	workers <u>5</u>	handlers <input checked="" type="checkbox"/>

INFORMATION AT A CENTRAL LOCATION

40 CFR 170.122/135

How to Comply Manual

Page #

- NA ☒ Y ☐ N Is the approved SAFETY POSTER displayed? 23
- NA ☒ Y ☐ N Is EMERGENCY MEDICAL INFORMATION displayed? (name, address & telephone number) 24
- NA ☒ Y ☐ N Is the site LOCATED where it can be readily seen and read by workers & handlers? 24
- NA ☒ Y ☐ N Are workers & handlers INFORMED of the location and are they allowed ACCESS to the site? 24
- NA ☒ Y ☐ N Does the information remain LEGIBLE while posted? 24
- NA ☒ Y ☐ N Is the following APPLICATION INFORMATION displayed? -Location and Description of the treated area; - Product Name; -EPA REG #; - Active Ingredient(s) of the pesticide; -Time & Date of application; - REI (restricted entry interval) 23

Comments (explain NA): Central Location - employee break/lunch room.

PESTICIDE EXPOSURE INCIDENTS/EMERGENCY ASSISTANCE

40 CFR 170.160

How are incidents reported for employees who become sick/injured by pesticides? Reported to Human Resources

- NA ☒ Y ☐ N Is prompt transportation to emergency medical facility available for employees who become sick/injured by pesticides? 36
- NA ☒ Y ☐ N Is information provided to medical personnel regarding the pesticide to which employees may have been exposed? 36

Who is the person responsible for providing transportation and pesticide information? Robert Graves

Y ☒ N Have there been any pesticide exposure incidents on this farm? If yes, give details:

Comments (explain NA):

EMPLOYER/CUSTOM APPLICATOR INFORMATION EXCHANGE

☒ NA (no custom applications) 40 CFR 170.124 & 170.224

- NA ☐ Y ☐ N Does the ag establishment notify the custom applicator regarding the location of treated areas and REIs? 34
- NA ☐ Y ☐ N Does custom applicator notify the ag establishment of required application information before the application? 33

How is the information exchanged? When/with whom?

Inspection # 05105501

ADDITIONAL DUTIES FOR WORKER EMPLOYERS

40 CFR 170.110

How to Comply Manual
Page #

RESTRICTIONS DURING APPLICATIONS

- ☒ NA ☒ Y ☐ N Are workers prohibited in treated areas during application and until REIs have expired? 45
- ☒ NA ☒ Y ☐ N Are workers prohibited in treated areas plus the additional buffer area during application in NURSERIES? 51/52
- ☒ NA ☒ Y ☐ N Are workers prohibited in a GREENHOUSE during application and until ventilation criteria are met? 53-55

NOTICE OF APPLICATIONS TO WORKERS

40 CFR 170.120

- ☒ NA ☒ Y ☐ N Are all GREENHOUSE applications posted with WPS warning signs? 42
- ☒ NA ☒ Y ☐ N Are workers given BOTH oral and posted notification when required by the pesticide label? 41-44
- ☒ NA ☒ Y ☐ N Are workers given notification of applications (EITHER orally or posted) for other applications? 41-44
- ☒ NA ☒ Y ☐ N Are workers told which method will be routinely used at this firm (oral or posted notification)? - circle one 41

Who notifies workers? Certified applicators

- ☒ NA ☒ Y ☐ N Have any early entry activities occurred?
- ☒ NA ☒ Y ☐ N Were workers informed of label restrictions re: early entry?

Posted Warning Signs ☒ NA for all

- ☒ NA ☒ Y ☐ N Does the employer use the approved WPS warning signs for posted notification? 42/43
- ☒ NA ☒ Y ☐ N Are the signs posted at all entrances of worker entry to the treated area? 42
- ☒ NA ☒ Y ☐ N Are the signs put up no sooner than 24 hours prior to application? 43
- ☒ NA ☒ Y ☐ N Are the signs removed within three days after the end of the REI? 43
- ☒ NA ☒ Y ☐ N Are the signs posted along the border of any labor camp adjacent to the treated area? 42

Oral Warnings ☒ NA for all

- ☒ NA ☒ Y ☐ N Are oral warnings given in a language (s) understood by workers? 44
- ☒ NA ☒ Y ☐ N Do oral warnings include: 1) location & description of treated area; 2) REI; 3) instructions not to enter during the REI? 44

Comments (explain NA): applications are made at night

ADDITIONAL DUTIES FOR HANDLER EMPLOYERS

APPLICATION RESTRICTIONS & MONITORING

☒ NA if no handlers employed 40 CFR 170.210

- ☒ NA ☒ Y ☐ N *Do both the employer & the handler assure that no pesticide is applied (either directly or through drift) so as to contact anyone other than trained and PPE-equipped handlers: 73
- How is this verified?
- ☒ NA ☒ Y ☐ N Are handlers monitored visually or by voice every two hours when handling SKULL & CROSSBONES pesticides? 73
- ☒ NA ☒ Y ☐ N Does the handler have a continuous visual or voice contact with another trained and PPE-equipped handler when handling a FUMIGANT in a GREENHOUSE? 73/74

SPECIFIC INSTRUCTIONS FOR HANDLERS

☒ NA if no handlers employed 40 CFR 170.232

- ☒ NA ☒ Y ☐ N Does the employer assure that handlers read the label or are informed (in a manner they can understand) about the label requirements for safe use before performing any handling activity? 75
- ☒ NA ☒ Y ☐ N Does the handler have access to the product labeling during handling activities? 75

SAFE OPERATION OF EQUIPMENT

☒ NA if no handlers employed 40 CFR 170.234

- ☒ NA ☒ Y ☐ N Is the handler instructed in the safe operation of handling equipment before it is used? By whom? 75
- ☒ NA ☒ Y ☐ N Is handling equipment inspected and repaired before each day of use? 77
- ☒ NA ☒ Y ☐ N Does the employer assure that only trained and PPE-equipped handlers repair, clean or adjust any handling equipment that contains pesticides or pesticide residues? 77

Comments (explain NA): no handlers employed

PERSONAL PROTECTIVE EQUIPMENT REQUIREMENTS FOR HANDLERS/EARLY ENTRY WORKERS**40 CFR 170.112/240**

- ☒ NA_Y_N Does the employer provide the handler/early entry workers with the appropriate PPE in clean and operating condition? 79
- ☒ NA_Y_N Does the employer assure that instruction on use and cleaning of PPE is given and that it is worn and used correctly? 79
- Who gives instructions and assures use of PPE?
- ☒ NA_Y_N Does the employer assure that PPE is inspected, cleaned, stored properly & repaired or replaced before each day of use? 79
- ☒ NA_Y_N Does the employer assure that filters are replaced on respirators when required? 80
- ☒ NA_Y_N Do handlers/early entry workers have a clean place to store personal clothing, put on PPE and remove PPE after use? 79
- Where is it located? 79
- ☒ NA_Y_N Is contaminated PPE disposed of properly? 79
- ☒ NA_Y_N Does the employer take appropriate measures to prevent heat-related illness for handlers/early entry workers using PPE? 79
- ☒ NA_Y_N Have handlers refused to wear proper PPE?

From labels of agricultural pesticides documented in an accompanying AUO inspection, list the following (for up to 4 products):

	Product Name	REI	PPE
1			
2			
3			
4			

If the label for any of the above products does not include agricultural use requirements - state so above.

Comments (explain NA):

WORKER AND HANDLER INTERVIEWS

- ☒ Y_N Were any workers or handlers interviewed? (circle which were) If no for either, explain why an interview was not conducted.

FAMILY ESTABLISHMENTS**40 CFR 170.104/110/112/124/224/240**

- ☒ NA_Y_N Are employees only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, sisters? 91
- If NO, skip this section.
- ☒ NA_Y_N Are non-handlers prohibited in treated areas during application and until REIs have expired? 92
- ☒ NA_Y_N Are non-handlers prohibited in treated areas plus the additional buffer area during application in NURSERIES? 92
- ☒ NA_Y_N Are non-handlers prohibited in a GREENHOUSE during application and until ventilation criteria are met? 92
- ☒ NA_Y_N Are early entry workers prohibited in treated areas during the first four hours after application? 93
- ☒ NA_Y_N Are early entry workers limited to one hour of work in a 24-hour period in treated areas during the REI? 93
- ☒ NA_Y_N Are early entry workers who perform irrigation and limited contact activities limited to eight hours of work in a 24-hour period? 93
- ☒ NA_Y_N Is the correct PPE for early entry PROVIDED for early entry activities at this firm? 93
- ☒ NA_Y_N Does the handler at this firm wear the label-specified PPE during handling tasks? 92
- ☒ NA_Y_N Is the label-specified PPE for handling activities at this firm PROVIDED in clean and operating condition? 92
- ☒ NA_Y_N Does this establishment notify commercial handlers regarding location of treated areas and REIs on the establishment? 92
- ☒ NA_Y_N Do commercial handlers notify this establishment of required application information before application takes place? 92

Comments (explain NA):

Additional Comments:

Print name of inspector <i>Elinda Brandon</i>	Print name of person interviewed <i>Robert Graves</i>
Signature of inspector <i>Elinda Brandon</i>	Signature of person interviewed <i>Robert Graves</i>



(WORKER)

WORKER PROTECTION STANDARD AGRICULTURAL WORKER INTERVIEW QUESTIONNAIRE

Inspection # (if interview related to an inspection):	051012SL301
Name of Establishment:	Faddegon's Nursery Inc.
Date of Interview:	5/10/12
# of Workers Interviewed:	1
Were workers accompanied by employers during interview?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Interview Conducted	<input checked="" type="checkbox"/> onsite <input type="checkbox"/> offsite

PESTICIDE SAFETY TRAINING

1. Do you know what a pesticide/poison is? ☒ Yes ☐ No

Ask them to briefly explain: Kills an unwanted insect.

2. Were you given pesticide-related instructions before you started working on this farm? ☒ Yes ☐ No

3. Did you receive pesticide safety training? ☒ Yes ☐ No

If yes, what type of training did you receive?

☒ movie ☐ flip chart (bring a picture of a flip chart) ☐ lecture ☐ handbook

4. Was the training in your native language? ☒ Yes ☐ No

5. Was an interpreter available during the training? ☐ Yes ☐ No N/A

6. Where did you receive the training? Farm ☐ House ☐ Office

7. When did you receive the training? ☒ During work ☐ At lunch ☐ After work?

8. Do you know who trained you? ☒ Yes ☐ No If yes, who? Robert Graves

9. When you were trained, were you taught about how to wear special clothes (PPE) such as gloves, boots, coveralls, mask) ☒ Yes ☐ No

10. When you were trained, were you taught about heat stress (eg. how to know when you've been in the heat for too long, how to avoid heat stress or what to do if you feel sick from it)? ☒ Yes ☐ No

11. (Show sample worker ID card) Were you given a card like this to show that you were trained?
☐ Yes ☒ No

Do you know of any another documentation that proves you received the required training?

☒ Yes ☐ No signed sheet

12. (Show the safety poster) Where is the safety poster located? ☐ Barn ☐ Garage ☒ Office ☐ House

13. (Show an example of application records) Has anyone ever showed you where these records are kept?
☒ Yes ☐ No If yes, where are they located? ☐ Barn ☐ Garage ☒ Office ☐ House

NOTIFICATION

14. Do you know where the signs are posted about pesticides that have been used recently?

☒ Yes ☐ No

If yes, where?

in front of greenhouse

Who posts the signs?

Robert Graves

15. Are you told about areas that have been treated with pesticides? ☒ Yes ☐ No

How are you told? ☒ Signs ☐ Oral warning ☐ Both

16. Who tells you when you get oral warnings? Is it the same person that posts the signs? ☒ Yes ☐ No

When do they post them?

Before treatment.

17. Are signs and oral warnings in your native language? ☒ Yes ☐ No

Inspector note how warnings are communicated to non-English speaking workers: _____

18. (Show warning REI sign.) Do you understand what this sign means? ☒ Yes ☐ No

If yes, do you pay attention to the warning signs and not enter or cross the fields? ☒ Yes ☐ No

19. Are you told when to stay out of treated areas? ☒ Yes ☐ No

20. Are the labels for the pesticides available for you to read? ☒ Yes ☐ No

A. Are the labels in a language you can understand? ☒ Yes ☐ No

B. Where is this information? ☐ Barn ☐ House ☒ Office

C. Is this information always available to you? ☒ Yes ☐ No

DECONTAMINATION SUPPLIES

21. Is there ☒ water ☒ paper towels ☒ soap, available all day?

If so, where?

bathroom

Is this location more than 1/4 mile from the work site? ☐ Yes ☒ No (Inspector verify, if worker does not know.)

22. Is there drinking water available? ☒ Yes ☐ No

If yes, is it separate from the wash water? ☒ Yes ☐ No

EARLY ENTRY

23. Have you ever entered a field or an area of a greenhouse soon after you saw a pesticide being sprayed or were you ever told to enter such an area soon after a pesticide was used? ☐ Yes ☒ No

A. If yes, were you informed about safety information pertaining to the pesticide, such as precautions, first aid, signs & symptoms of poisoning, necessary PPE?

Or,

If you are able to read and understand pesticide labels, given access to a legible copy of the pesticide label allowed to read it for yourself?

☐ Yes ☐ No

B. If yes, were you given special clothing to wear? ☐ Yes ☐ No

C. If you did enter such an area, why?

HANDLER TASKS

24. In the past year, have you ever worked with pesticides to do any of the following?

✓ Y/N	mixing pesticides	adding to pesticide sprayers	applying pesticides to crops	repair or clean a pesticide sprayer	other activity (briefly describe)
Yes					
No	X	X	X	X	

If yes, were you trained in doing that work before you did it? ☐ Yes ☐ No

EXPOSURE INCIDENTS

25. Do you know that pesticides can hurt you if they get on your skin or clothing? ☒ Yes ☐ No

26. Do you take pesticide containers home with you? ☐ Yes ☒ No

A. If yes, what do you use them for?

B. Are chemicals ever in the containers? ☐ Yes ☐ No

27. Have you ever felt as though pesticides/poisons have made you sick after working in the fields?
☐ Yes ☒ No

If yes, what were your symptoms?

28. Were you ever directly sprayed/dusted by pesticides? ☐ Yes ☒ No

If yes, approximately when and how did this happen?

29. Did you ever miss work because of being ill from pesticides? ☐ Yes ☒ No

If yes, when and where did this occur?

30. Did you tell your employer or foreman about your pesticide exposure? ☐ Yes ☐ No

Did your employer or foreman take you to the hospital or clinic? ☐ Yes ☐ No

31. Do you know whether other workers got ill from or sprayed by pesticides? ☐ Yes ☒ No

EMERGENCY ASSISTANCE

32. Do you know where to go on your farm/greenhouse to get information about the closest hospitals/clinics (facility's name, phone number, address)? ☒ Yes ☐ No

A. Where is the information? ☐ Barn ☐ House ☒ Office

B. Is this information always available? ☒ Yes ☐ No

33. Do you know who to contact on the farm/greenhouse if you have a medical emergency while working? ☒ Yes ☐ No

34. Do you know who would take you to the hospital/clinic if you were sick from pesticides? ☒ Yes ☐ No

35. How do you or the employer report pesticide-related illnesses? to Robert Graves

RETALIATION

36. Have you ever been told to do something with pesticides on the farm (greenhouse, etc) that you thought you should not do? ☐ Yes ☒ No

37. Are you always able to do what is needed, like wear special clothing or know about pesticides used, without the employer stopping you from doing those things? ☒ Yes ☐ No

38. Have you ever complained about something relating to pesticides and your work at the farm/greenhouse and been threatened to be fired? ☐ Yes ☒ No

GENERAL

39. Where do you come from? (Country or State of origin) Niskayuna, NY

40. Is farm work your primary job? ☐ Yes ☒ No

41. Have you worked on farms before? ☒ Yes ☐ No

A. For how many years? 20+

B. How many months out of the year do you work on farms? 2

C. How long have you worked at your present farm? 20+

42. In what other states have you worked on farms? N/A

Worker Protection Standard
Farm Worker Interview Questionnaire

43. Do you think your working conditions have improved or changed over the last five years?

☒ Yes ☐ No

Are conditions on some farms better than others? ☐ Yes ☐ No

14. What crops have you worked on in the last two years? annuals



AUG

PESTICIDE APPLICATOR/BUSINESS/USE INSPECTIONS

INSPECTION NUMBER 05101251801		FIRM/FACILITY/PERSON INTERVIEWED Faddogon's Nursery Inc.		EQUIPMENT TYPE/SIZE Mist blower.	
TYPE OF INSPECTION: <input type="checkbox"/> Business/Agency <input checked="" type="checkbox"/> Applicator <input type="checkbox"/> Non-agricultural use <input checked="" type="checkbox"/> Agricultural use		SITE OF INSPECTION 1140 Troy Schenectady Rd, Latham		EQUIPMENT TYPE/SIZE 1/2-2 gal.	
BUSINESS REG. NO./EXPIRATION DATE N/A		INSURANCE COMPANY/EXPIRATION DATE N/A			
APPLICATOR NAME/CERTIFICATION TYPE		CERTIFICATION ID		CATEGORY/EXPIRATION	
Robert Graves Comm. Appl		C416025605		3A 2/21/2012	
Scott Mulberry Comm. Appl		C4847057		3A 4/21/14	
SUPERVISED BY				500+ Mulberry.	
DATE/TIME/WEATHER CONDITIONS DURING APPLICATION 5/10/12		CROP Tropicals		SITE/SIZE #1,2,3,4 Greenhouses	
TARGET PESTS Aphids Spider Mite					
PESTICIDE NAME/EPA REG NO.		METHOD OF APPLICATION		CLASSIFICATION	
Avid 100-896		Mist blower		GU	
Tristar 8033-22-1001		"		GU	
74				Gran.	
FORMULATION		LABEL RATE		OBSERVED RATE	
EC		4-8 fl oz/100 gal		5 oz/gal.	
Gran.		1.5 fl oz/100 gal		5 oz/gal.	
REFERENCE SECTION		Yes		No	
Label Rate Followed		325.2(b)		X	
Target Pests on Label		325.2(b)		X	
PPE/Cautionary Labeling Followed		325.2(b)		X	
Preharvest Interval/REI per Label		325.2(b)		X	
Crop/Area Treated per Label		325.2(b)		X	
Pesticide Containers Properly Labeled		33.1301(1)(b)		X	
Service Containers Properly Labeled		33.1301(1)(b)		X	
Containers Properly Rinsed and Disposed		325.4(a)		X	
Backflow Prevention/Air Gap Present		325.2(c)		X	
Proper Stickers on Equipment/Vehicles		325.26		X	
Equipment Properly Calibrated				X	
Storage Locked/Containers Secure				X	
Warning Signs Posted				X	
Location of Container Disposal: 5x reuse dumpster				X	
Location of Pesticide Storage: locked cabinet				X	
Water Source: municipal				X	
Pesticide Mixing Area: in greenhouse.				X	
REMARKS:					
Avid - applied over labeled rate.					
Tristar - apply as a full coverage foliar spray, applied over labeled rate.					
INSPECTOR'S SIGNATURE		DATE AND TIME INSPECTED			
Klinda Brandon		5/10/12 1:40 pm.			

NAVO

PESTICIDE APPLICATOR/BUSINESS/USE INSPECTIONS

INSPECTION NUMBER 0510125501		FIRM/FACILITY/PERSON INTERVIEWED Saddegon's Nursery Inc.		EQUIPMENT TYPE/SIZE Hand Can.	
TYPE OF INSPECTION: <input checked="" type="checkbox"/> Business/Agency <input checked="" type="checkbox"/> Applicator		SITE OF INSPECTION 1140 Troy Schenectady Rd, Latham, NY		EQUIPMENT TYPE/SIZE 2 gal	
<input checked="" type="checkbox"/> Non-agricultural use <input type="checkbox"/> Agricultural use		INSURANCE COMPANY/EXPIRATION DATE			
BUSINESS REG. NO./EXPIRATION DATE 03985 6/30/12					
APPLICATOR NAME/CERTIFICATION TYPE		CERTIFICATION ID	CATEGORY/EXPIRATION	SUPERVISED BY	
Robert Lewis Comm Appl		01833521	3A 10/21/14		
DATE/TIME/WEATHER CONDITIONS DURING APPLICATION 10/10/11		CROP mulch beds	SITE/SIZE		TARGET PESTS
PESTICIDE NAME/EPA REG NO.		METHOD OF APPLICATION	CLASSIFICATION	FORMULATION	LABEL RATE
Imidacloprid 102-705		Hand can			
LABEL/EQUIPMENT REQUIREMENTS	REFERENCE SECTION	Yes	No	NA	APPLICATOR REQUIREMENTS
Label Rate Followed	325.2(b)				Apprentices Properly Supervised
Target Pests on Label	325.2(b)				Apprentices Trained/Documented
PPE/Cautionary Labeling Followed	325.2(b)				Apprentice Variance Approved
Preharvest Interval/REI per Label	325.2(b)				I. D. Card in Possession During Use
Crop/Area Treated per Label	325.2(b)				Label in Possession During Use
Pesticide Containers Properly Labeled	33.1301(1)(b)				Notification Requirements Met
Service Containers Properly Labeled	33.1301(1)(b)				REPORTS/RECORDS
Containers Properly Rinsed and Disposed	325.4(a)				EPA Reg. No.
Backflow Prevention/Air Gap Present	325.2(c)				Product Name
Proper Stickers on Equipment/Vehicles	325.26				Quantity
Equipment Properly Calibrated					Date Applied
Storage Locked/Containers Secure					Address
Warning Signs Posted		<input checked="" type="checkbox"/>			Place of Application
Location of Container Disposal:					Dosage Rate
Location of Pesticide Storage: locked cabinet					Method of Application
Water Source:					Target Organism/Crop Treated
Pesticide Mixing Area:					Records Kept 3 Years
REMARKS: will continue inspection at later date w/ applicator/s responsible for comm. lawn applications					
INSPECTOR'S SIGNATURE Blinda Brande		DATE AND TIME INSPECTED 5/10/12 2:50pm			



ORNAMENTAL AND TURF CHECKLIST

FIRM/ FACILITY: <u>Faddgeon's Nursery Inc.</u>		INSPECTION #: <u>051012SL801</u>				
JOB LOCATION: <u>11 Pleasant Lane, Menards, NY 12204</u>						
COMMERCIAL LAWN APPLICATION CHECKLIST		6 NYCRR Part:	Yes	No	N/A	Un-known
I	Does a commercial lawn application contract exist between the business and the property owner/ agent in charge of the property? - If YES, Complete A-N	325.40(a)	<input checked="" type="checkbox"/>			
A	Is a copy of the valid lawn application contract maintained by the pesticide application company?	325.40(a)(c)	<input checked="" type="checkbox"/>			
B	Does the contract state the name of property owner or his agent and address to be treated?	325.40(a)(5)		<input checked="" type="checkbox"/>		
C	Does the contract contain the approximate and/or specific date or dates of application?	325.40(a)(1)	<input checked="" type="checkbox"/>			
D	Does the contract contain the total cost of all the commercial lawn applications?	325.40(a)(3)		<input checked="" type="checkbox"/>		
E	Does the contract contain the total number of commercial lawn applications for the season?	325.40(a)(2)	<input checked="" type="checkbox"/>			
F	Is contract signed by the pesticide applicator/business and the owner or owner's agent?	325.40(a)(6)		<input checked="" type="checkbox"/>		
G	Was written notice provided if existing contract transferred to different application company?	325.40(b)			<input checked="" type="checkbox"/>	
H	Does contract list substances to be applied, including brand names and generic names of active ingredients? [In 12 point type? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	325.40(a)(4)(i)	<input checked="" type="checkbox"/>			
I	Are pertinent label warnings in contract? [In 12 point type? Yes <input type="checkbox"/> No <input type="checkbox"/>	325.40(a)(4)(ii)				
J	Is business name, address and phone number listed on contract? [In 12 point type? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	325.40(a)(4)(iii)	<input checked="" type="checkbox"/>			
K	Is business registration number listed on contract? [In 12 point type? Yes <input type="checkbox"/> No <input type="checkbox"/>	325.40(a)(4)(iii)		<input checked="" type="checkbox"/>		
L	Is applicator certification number listed on contract? [In 12 point type? Yes <input type="checkbox"/> No <input type="checkbox"/>	325.40(a)(4)(iii)		<input checked="" type="checkbox"/>		
M	If the specific pesticides for a proposed application date are not listed in the contract, was written/oral notification provided to the owner/agent prior to/at the application?	325.40(d)			<input checked="" type="checkbox"/>	
N	How are alternate dates of application provided?	325.40(c)	Oral <input type="checkbox"/> Written <input checked="" type="checkbox"/> Not Provided <input type="checkbox"/>			
II.	Has application area been visually posted? If Yes, complete A-O	325.40(f)			<input checked="" type="checkbox"/>	
A	Are the visual markers AT LEAST 4" By 5" in size?	325.40(f)				
B	Are visual markers yellow in color with black lettering?	325.40(f)				
C	Are all of the letters on the markers AT LEAST 3/8" in height?	325.40(f)				
D	Is "Pesticide Application" or "Pesticide Treatment" or "Pesticides Applied" on marker front?	325.40(f)(1)				
E	Do the front of the markers contain the phrase "Do Not Enter" ?	325.40(f)(3)				
F	Do the front of the markers contain the phrase "Do Not Remove Sign For 24 Hours" ?	325.40(f)(4)				
G	Does marker have 1.5" diameter warning symbol (e.g. person & dog w/slash or stern face w/hand)?	325.40(f)(5)				
H	Does marker contain date & time of application unless provided to owner/agent prior to leaving?	325.40(f)(2)				
I	Does the marker front contain anything other than D - H above and business name & phone #?	325.40(g)				
J	Are the top of the markers AT LEAST 12" above the ground?	325.40(h)(1)				
K	Were markers posted prior to application?	325.40(h)(2)				
L	Are markers placed such that front of the markers are clearly visible from outside the treated area?	325.40(h)(3)				
M	Is marker placement not more than 50' apart (4"x5"sign) or not more than 100' apart (5"x6"sign)?	325.40(h)(4)				
N	Markers also placed at common entry points adjacent to treated areas, such as drive & walkways?	325.40(h)(5)				
O	Are AT LEAST 2 markers posted on treated premises that have all or portions of the perimeter impassable due to nature/manmade objects, except for treated trees/shrubs approachable one-way?	325.40(h)(6)			<input checked="" type="checkbox"/>	
NOTES: <u>unknown if labels are provided to customers</u>						
INSPECTOR'S SIGNATURE: <u>[Signature]</u>						DATE: <u>5/10/12</u>



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MARKET PLACE / RESTRICTED DEALER RECORDS INSPECTION

INSPECTION NUMBER 0510129501		FIRM Fardlegon's Nursery Inc.				
CHECK INSPECTION(S) COMPLETED: <input checked="" type="checkbox"/> MARKETPLACE <input type="checkbox"/> RESTRICTED DEALER RECORDS						
*COMMERCIAL PERMIT NO. N/A		*EXPIRATION DATE: N/A				
*CERTIFIED APPLICATOR NAME N/A	*CERTIFICATION NUMBER	*EXPIRATION DATE	*CATEGORIES			
LIST PESTICIDES BELOW IN ORDER TO - CHECK REGISTRATION STATUS, REVIEW LABEL REQUIREMENTS, AND/OR CHECK RESTRICTED SALES RECORDS:						
PESTICIDE NAME	EPA REG. NUMBER	LABELER	ADDRESS	R		
*Whitney Farms Lawn Weed Killer	67702-27-73327	Rod Mclellan Co.	3993 Howard Hughes Way, Suite 250 Las Vegas, NV 89169			
*Weed Pharm Fast Acting weed + grass killer	81936-1-81935	Pharm Solutions Inc	P2023 E Sims Way, Ste 358 Port Townsend, WA 98368			
*Hi-Yield Nutsedge Control	228-702-7401	Voluntary Purchasing Groups, Inc.	230 FM 87 Bonham, TX 75418			
*Bayer Lawn + Garden Multi-Insect Killer	3125-502-72155	Bayer-Purcell, LLC	1500 Urban Center Dr Birmingham, AL 35242			
*Natria Lawn Weed Control	67702-26-72155	Bayer Advanced	PO Box 12014 Research Triangle Park, NC 27109			
*Serenade Garden Disease Control RTU	69592-12	AgraQuest, Inc.	1540 Drew Ave. Davis, CA 95618			
*Bonide Garden Aust	4-30	Bonide Products Inc.	6501 5th St Rd. Oriskany, NY 13424			
STORAGE, LABELING & RECORDS		SECTION	YES	NO	NA	REMARKS
Packaging in good condition/original containers		33-1301.1(b)	<input checked="" type="checkbox"/>			
All pesticides stored and/or displayed away from food and feed		325.2(b)	<input checked="" type="checkbox"/>			
*Restricted Pesticides stored in a secure manner		326.11			<input checked="" type="checkbox"/>	
All pesticides properly labeled and legible		33-1301.1(e)	<input checked="" type="checkbox"/>			
Section 18 / 24(c) labeling and/or supplemental labeling provided		33-1301.1(e)			<input checked="" type="checkbox"/>	
*Required records kept for all Restricted Use Pesticide transactions		326.3			<input checked="" type="checkbox"/>	
*Required records kept for at least 2 years		326.3(f)			<input checked="" type="checkbox"/>	
Sign displayed in accordance with the Neighbor Notification Law		33-1004.1(a)	<input checked="" type="checkbox"/>			
Quarantine Order issued as a result of this inspection			<input checked="" type="checkbox"/>			See Quarantine Order form for pesticides in non-compliance
Inventory check made on previous Quarantine Order and/or Release issued						Previous Inspection No.:
ADDITIONAL REMARKS Bayer Lawn + Garden Multi-Insect Killer and Bonide Garden Aust - unregistered						
INSPECTOR'S SIGNATURE John De Bando		DATE 5/10/12		R = Restricted Use Pesticide * Required field for RDR		

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0529125LS01

QUARANTINE ORDER

INSPECTION #	05105LS01	DATE	05/10/12	5/29/12	REGION	4	
TO	Robert Graves						
ADDRESS	1140 Troy Schenectady Rd.						
CITY	Latham	COUNTY	Albany	STATE	NY	ZIP	12110
OWNER, CUSTODIAN, OR VENDOR OF THAT CERTAIN LOT OF PESTICIDES MARKED OR DESCRIBED AS FOLLOWS:							

Conditional Release Granted (Inspector Initial)	Product Name	EPA Number	Quantity
	Bayer Lawn + Garden Multi-Insect Killer	3125-502-72155	(2) 32 Fl oz
5/29/12	Bonide Garden Dust	4-30	(4) 10 oz.
	Liquid Fence Deer + Rabbit Repellent	EPA 25b exempt	(12) 48 Fl oz (concentrate)
			(12) 32 Fl oz (RTU)
			(1) 1 gal (RTU)
5/29/12	Liquid Fence Deer Rabbit Repellent	EPA 25b exempt	(16) 32 Fl oz (RTU)

LOCATION OF QUARANTINED ITEMS: In Pesticide cabinet in old warehouse.

You are hereby notified that the above described pesticide(s), upon inspection or test is found to be in violation of provisions of the Environmental Conservation Law or the rules and regulations promulgated thereunder in the following respect:

33-1301(a) unregistered pesticides.

YOU ARE HEREBY DIRECTED AND ORDERED, in accordance with the provisions of the Environmental Conservation Law (Article 33, Section 33-1301) from and after the time of service upon you of this order, to stop and refrain from further sale, use, disposition and movement of said pesticide or any part thereof until this order shall have been withdrawn by the inspector, upon evidence that the law or rules and regulations promulgated thereunder has been complied with. IT IS UNLAWFUL FOR ANY PERSON TO MOVE OR ALLOW TO BE REMOVED OR OTHERWISE HANDLE OR DISPOSE OF ANY PESTICIDE HELD UNDER A QUARANTINE ORDER OR TAGS ATTACHED THERETO EXCEPT WITH THE WRITTEN PERMISSION OF THE INSPECTOR AND FOR THE PURPOSE SPECIFIED THEREIN.

Selinda Brandon
ISSUING INSPECTOR'S SIGNATURE

Selinda Brandon
INSPECTOR'S NAME

SLS
INSPECTOR'S ID NUMBER

I HEREBY ACCEPT SERVICE OF THE ABOVE ORDER

this 10th day of May 2012

SIGNED

Robert Graves
TITLE

VP

CONDITIONAL QUARANTINE RELEASE

You are hereby granted permission to return those pesticides that are *initiated by the inspector as conditionally released* to the supplier or manufacturer. Proof in the form of _____ must be submitted *within 15 business days from the signing of this form* to the inspector's attention at this address: NYSDEC.

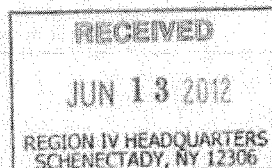
Failure to provide the required documentation is a violation Article 33, Section 33-1301 (10).

INSPECTOR'S SIGNATURE	DATE
I agree to comply with the terms of this conditional release.	DATE
SIGNED	TITLE



1140 Troy-Schenectady Road
Latham, N.Y. 12110
Garden Center: 518-785-6726
Int./Ext. Landscape: 518-785-6763
www.faddegons.com

Robert Graves
Faddegons Nursery
1140 Troy Schenectady Rd.
Latham, NY 12110
June 11th, 2012



Selinda Brandon
NYS DEC Region 4
Bureau of Pesticides
1130 N Wescott Rd.
Schenectady, NY 12306

Dear Ms. Brandon,

Please find enclosed the shipping documentation you requested for Bonide Garden Dust.

The Bayer Lawn and Garden Multi-Insect killer was obtained when we purchased Cottage Agway and its inventory on or about March 2004. We do not have any documentation for this product.

Sincerely,

Robert Graves

INSPECTION REPORT COVER SHEET

Inspection #: 051012SL501	Name of Person Contacted: Robert Graves
Name of Business: Fiddlegon's Nursery Inc.	Official Position: VP
Street Address: 1140 W. Schenectady Rd.	Post Office Address: N/A
City/State/Zip Code: Latham, NY 12110	City/Village/Township: N/A
Telephone Number: 785-6126	County: Albany

Inspector's Initials	Name of Inspection Form	Form Number
SLB	Notice of Inspection	NOI
SLB	Pesticide Applicator/Business/Use Inspections 2 pages	USE
SLB	Worker Protection Standard Inspection 4 pages	WPS
	Liquid Termiticide Use Checklist	TER
SLB	Ornamental and Turf Checklist	T&O
	Voluntary Statement	VOL
	Receipt for Samples	SAM
SLB	Market Place/Restricted Dealers Records Inspection	MKT
	Market Place/Restricted Dealer Records Inspection Continuation Sheet	MPC
SLB	Quarantine Order	QRN
	Quarantine Order Release	QOR
	Experimental Use Permit Checklist	EUP
	Authorization for Medical Record Disclosure	MED

Inspector's Signature: John Brandon Number: SL5 Date: 5/10/12

Inspection Acknowledgment: I acknowledge receiving a copy of the above listed inspection documents initialed by the inspector.

Signature: Robert Graves Date: 5/10/12

Print Name: Robert Graves